

THE MINNESOTA CHIPPEWA TRIBE

ORDINANCE NO. 16

SECTION 1. Forcible Entry and Unlawful Detainer

No person shall make entry into lands or tenements except in cases where his entry is allowed by law, and in such cases he shall not enter by force but only in a peaceable manner.

SECTION 2. Unlawful Detention of Lands or Tenements Subject to Fine

When any person has made unlawful or forcible entry into lands or tenements, and detains the same, or, having peaceably entered, unlawfully detains the same, the person entitled to the premises may recover possession thereof in the manner hereinafter provided.

SECTION 3. Recovery of Possession

When any person holds over lands or tenements after a sale thereof on an execution or judgement, or on foreclosure of a mortgage and expiration of the time for redemption, or after termination of contract to convey the same, or after termination of the time for which they are demised or let to him or to the persons under whom he holds possession, or contrary to the conditions or covenants of the lease or agreement under which he holds, or after any rent becomes due according to the terms of such lease or agreement, or when any tenant at will holds over after the determination of any such estate by notice to quit, in all such cases the person entitled to the promise may recover possession thereof in the manner hereinafter provided.

SECTION 4. Complaint and Summons

The person complaining shall file a complaint with the court, describing the premises of which possession is claimed, stating the facts which authorize the recovery, and praying for restitution thereof. The court shall issue a summons, commanding the person against whom the complaint is made to appear before the court on a day and at a place stated in the summons. The appearance shall not be less than seven (7) days nor more than fourteen (14) days from the date of issuing the summons. A copy of the complaint shall be attached to the summons, which shall state that the copy is attached and that the original has been filed.

SECTION 5. Summons: How Served

The summons shall be served at least seven (7) days before the return day. If the person cannot be found on the premises of which possession is claimed, the summons may be served on him at least fourteen (14) days before its return day by leaving a copy at his last usual place of abode with a member of his family, or a person of suitable age and discretion residing there, or if he has no place of abode, by leaving a copy upon the premises described in the complaint with a person of suitable age and discretion occupying the same or any part thereof. The summons may be served by any person not named a party to the action. If the defendant cannot be found, and no person actually occupies the premises described in the complaint, upon the filing of an affidavit of the plaintiff or his attorney stating that (1) the defendant cannot be found or on belief that the defendant is not residing on the subject premises, and (2) a copy of the summons has been mailed to the defendant at his last known address, if any is known to the plaintiff. Service of the summons may be made upon the defendant by posting the summons in a conspicuous place on the premises for not less than one (1) week. If the defendant or his attorney does not appear in court upon the return day in the action, the trial thereof, shall proceed.

SECTION 6. Answer; Trial

After the return of the summons, at the time and place appointed therein, if the defendant appears, he may answer the complaint, and all matters in excuse, justification, or avoidance of the allegations thereof shall be set up in the answer; and thereupon the court shall hear and determine the action, but either party may demand a trial by jury.

SECTION 7. Adjournment; Security for Rent

The court, in its discretion, may adjourn the trial if the defendant, his agent or attorney, shall make oath that he cannot safely proceed to trial for want of a material witness, naming him, and that he has made due exertion to obtain the witness, and believes that, if such adjournment be allowed, he will be able to procure the attendance of such witness at the trial, or his deposition, and shall give bond conditioned to pay to the plaintiff all rent which may accrue during the pendency of the action, and all costs and damages consequent upon such adjournment, the court shall adjourn the trial for such time as may appear necessary, not exceeding three (3) months.

SECTION 8. Judgement; Fine; Execution

If the court or jury finds for the plaintiff, the court shall immediately enter judgement that the plaintiff have restitution of the premises and tax the costs for him. The court shall issue execution in favor of the plaintiff for the costs and also immediately issue a writ of restitution. Upon showing by the defendant that immediate restitution of the premises would work a substantial hardship on him or his family, the court shall stay the writ of restitution for a reasonable period, not to exceed seven (7) days. If the court or jury finds for the defendant, the court shall enter judgement for the defendant, tax the costs against the plaintiff, and issue execution thereof.

SECTION 9. Disagreement

If the jury cannot agree upon a verdict, the court may discharge them, and issue a venire, returnable forthwith, or at some other time agreed upon by the parties or fixed by the court, for the purposes of impaneling a new jury.

SECTION 10. Writ of Restitution: Effect of Appeal

If the party against whom judgement for restitution is rendered or his attorney states to the court that he intends to take an appeal, a writ of restitution shall not issue for 24 hours after judgement. In an action on a lease, against a tenant holding over after the expiration of the term thereof, or a termination thereof by a notice to quit, such writ may issue forthwith such notice of appeal, if the plaintiff gives bond conditioned to pay all costs and damages in case on the appeal the judgement of restitution be reversed and a new trial ordered.

SECTION 11. Appeal: Stay

If either party feels aggrieved by the judgement, he may appeal within ten (10) days as in other cases triable before courts except that if the party appealing remains in possession of the premises, his bond shall be conditioned to pay all costs of such appeal and abide the order of the court may make therein and pay all rents and other damages justly accruing to the party excluded from possession during the pendency of the appeal. Upon the taking of such appeal all further proceedings in the case shall be stayed, except that in an action on a lease against a tenant holding over after expiration of the term thereof or termination thereof by notice to quit, if the plaintiff gives bond, a writ of restitution shall issue as if no appeal had been taken and the appellate court shall thereafter issue all needful writs and processes to carry out any judgement which may be rendered in such court.

SECTION 12. Appeal After Issuance of Writ: Stay

If a writ of restitution has issued before the taking of an appeal, the court shall give appellant a certificate of the allowance thereof and upon service of such certificate upon the officer having the writ he shall cease all further proceedings thereunder and if the writ has not been completely executed the defendant shall remain in possession of the premises until the determination of the appeal, but this section shall not apply to a case where judgement for restitution has been entered on a lease against a tenant holding over after the expiration of the term thereof or determination thereof by notice to quit.

SECTION 13. Dismissal of Appeals: Amendments: Return

In all cases of appeal, the appellate court shall not dismiss or quash the proceedings for want of form only, provided they have been conducted substantially in accordance with the provisions of this Ordinance. Amendments may be allowed at any time, upon such terms as to the Court may appear just, in the same cases and manner and to the same extent as in civil actions. The court may compel the trial court, by attachment, to make or amend any return which is withhold or improperly or insufficiently made.

SECTION 14. Form of Verdict

The verdict of the jury or the finding of the court in favor of the plaintiff in an action under this chapter shall be substantially in the following form:

At a court held at....., on the.....day of....., 19....., before....., a judge in and for The Minnesota Chippewa Tribe, in an action between....., plaintiff, and....., defendant, the jury (or, if the action be tried without a jury, the court) find that the facts alleged in the complaint are true, and the said plaintiff ought to have restitution of the premises therein described without delay.

If the verdict or finding be for the defendant, it shall be sufficient to find that the facts alleged in the complaint are not true.

SECTION 15. Forms of Summons and Writ

The summons and writ of restitution may be substantially in the following forms:

FORM OF SUMMONS

MINNESOTA CHIPPEWA TRIBE)
) SS
RESERVATION)

Whereas,, of, hath filed with the undersigned judge, a complaint against, of, a copy whereof is hereto attached: Therefore you are hereby summoned to appear before the undersigned on theday of, 19, ato'clock, ...m, at, then and there to make answer to and defend against the complaint aforesaid and to further be dealt with according to law.

Dated at,this day of, 19 ...

Judge

FORM OF WRIT OF RESTITUTION

MINNESOTA CHIPPEWA TRIBE)
) SS
RESERVATION)
THE.....

Whereas,, plaintiff, of, in an action for an unlawful or forcible entry and detainer (or for an unlawful detainer, as the case may be) at a court held at, in the Reservation aforesaid, on theday of, 19....., beforeJudge, by the consideration of the court, recovered a judgement against, of, to have restitution of (here describe the premises as in the complaint):

Therefore, you are hereby commanded that, taking with you the force of this Reservation, if necessary, you cause the said to be immediately removed from the aforesaid premises, and the said to have peaceable restitution of the same. You are also hereby commanded that the goods and chattels of the saidwithin said Reservation you cause to be levied, and the same being disposed of according to law, to be paid to the same, the sum offor the said,and that the court aforesaid, together with 25 cents due for this writ; and therefore with this writ, make due return within 30 days from the date hereof, according to law.

Dated atthisday of, 19 ...

Judge

SECTION 16. Execution of the Writ of Restitution

The officer holding the writ of restitution shall execute the same by making a demand upon defendant if he can be found on the premises, or other person in charge thereof, for the possession of the same, and that the defendant remove himself, his family and all of his personal property from such premises within 24 hours after such demand. If defendant fails to comply with the demand, then the officer shall take with him, if necessary, the force of the Reservation and whatever assistance may be necessary, at the cost of the complainant, remove the said defendant, his family and all his personal property from said premises detained, immediately and place the plaintiff in the possession thereof. In case defendant cannot be found on the premises, and there is no person in charge of the premises detained, so that no demand can be made upon the defendant, then the officer shall enter in to the possession of the premises, breaking in if necessary, and remove all property of the defendant at the expense of the plaintiff. The plaintiff shall have a lien upon all of the goods upon the premises for the reasonable costs and expenses incurred for removing the personal property and for the proper caring and storing the same, and the costs of transportation of the same to some suitable place of storage, in case defendant shall fail or refuse to make immediate payment for all the expenses of such removal from the premises and plaintiff shall have the right to enforce such lien by detaining the same until paid, and, in case of non-payment, for sixty (60) days after execution of the writ, shall have the right to enforce his lien and foreclose the same by public sale.

We do hereby certify that the foregoing Ordinance was duly presented and adopted by a vote of 7 For, 2 Against, 0 Silent, at a Regular Meeting of The Minnesota Chippewa Tribal Executive Committee, a quorum was present, held on April 29 & 30, 1985 at Minneapolis, Minnesota.

Darrell Wadena, President
THE MINNESOTA CHIPPEWA TRIBE

ATTEST: Daniel Morrison, Sr., Secretary
THE MINNESOTA CHIPPEWA TRIBE